UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DORIS HANLON,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 02-147-P-C***
	)	
JO ANNE B. BARNHART,	***)***	
Commissioner of Social Security,	***)***	
	)	
Defendant	***)***	

REPORT AND RECOMMENDED DECISION[1]

This Social Security Disability ("SSD") appeal raises the question whether substantial evidence supports the commissioner's determination that the plaintiff, who alleges that she has been disabled from working since August 1, 1997 by thyroid and emotional problems, had no severe impairment as of March 31, 1998, her date last insured. I recommend that the decision of the commissioner be affirmed.

In accordance with the commissioner's sequential evaluation process, 20 C.F.R. § 404.1520, *Goodermote v. Secretary of Health & Human Servs.*, 690 F.2d 5, 6 (1st Cir. 1982), the administrative law judge found, in relevant part, that the plaintiff had acquired sufficient quarters of coverage to remain insured only through March 31, 1998, Finding 1, Record at 14; that as of her date last insured

[1] This action is properly brought under 42 U.S.C. § 405(g). The commissioner has admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the commissioner's decision and to complete and file a fact sheet available at the Clerk's Office. Oral argument was held before me on March11, 2003, pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page references to the administrative record.

she had hypothyroidism and a mood disorder related to hypothyroidism, Finding 3, *id*.; that her statements concerning her impairments and their impact on her ability to work as of her date last insured were not entirely credible, Finding 4, *id*.; that as of her date last insured she did not have any impairment that significantly limited her ability to perform basic work-related functions and therefore did not have a severe impairment, Finding 5, *id*.; and that she was not under a disability at any time through her date last insured, Finding 6, *id*. The Appeals Council declined to review the decision, *id.* at 3-4, making it the final determination of the commissioner, 20 C.F.R. §404.981; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the commissioner's decision is whether the determination made is supported by substantial evidence. 42 U.S.C. §§ 405(g); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusion drawn. *Richardson v. Perales,* 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

The administrative law judge reached Step 2 of the sequential evaluation process. Although a claimant bears the burden of proof at this step, it is a *de minimis* burden, designed to do no more than screen out groundless claims. *McDonald v. Secretary of Health & Human Servs*., 795 F.2d 1118, 1123 (1st Cir. 1986). When a claimant produces evidence of an impairment, the commissioner may make a determination of non-disability at Step 2 only when the medical evidence "establishes only a slight abnormality or combination of slight abnormalities which would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered." *Id.* at 1124 (quoting Social Security Ruling 85-28).

The plaintiff complains that the administrative law judge's decision suffers from multiple

flaws, including failure to apply Social Security Ruling 83-20 (pursuant to which onset date of disability may be inferred), misapplication of the Step 2 standard and skewed interpretation of the evidence. *See generally* Statement of Errors (Docket No. 6); *see also* Social Security Ruling 83-20, reprinted in *West's Social Security Reporting Service* Rulings 1983-1991, at 49-57. I find no reversible error.

I. Discussion

The plaintiff identifies two points of error: that the administrative law judge (i) "improperly assessed the medical evidence, failed to infer the date of onset as required, used an erroneous legal test in his finding and ultimately rendered a decision not supported by substantial evidence" and (ii) made a credibility determination unsupported by substantial evidence. Statement of Errors at 2, 16. For the reasons discussed below, none of these assertions has merit.

1. **Improper Assessment of Medical Evidence**. The plaintiff contends that the administrative law judge (i) failed to obtain a consultative examination concerning her mental condition, (ii) "essentially ignored" the retrospective analysis of her own mental-health consultant, Frank Luongo, Ph.D., and (iii) misinterpreted notes made by her general practitioner, Michael J. Major, M.D., during the period prior to her date last insured. *Id*. at 2-6; *see also* Record at 115-17, 141-44, 149-56. The first of these sub-points is more in the nature of a disappointment than a point of error. The plaintiff argues that "[o]n this slim record, it would have been very helpful if the ALJ or DDS had obtained a CE to clarify her condition." Statement of Errors at 2-3. However, she neither claims, nor cites authority for the proposition, that in these circumstances an administrative law judge must obtain a retrospective mental-health consultative examination. In any event, the administrative law judge did have the benefit of the input of two non-examining mental-health consultants, Peter G.

Allen, Ph.D., and David R. Houston, Ph.D., as to the plaintiff's mental condition prior to her date last insured. *See* Record at 121-29, 131-39.

Nor did the administrative law judge ignore or fail to give due weight to the opinion of Dr. Luongo. As the administrative law judge suggested, Dr. Luongo evaluated the plaintiff's status as of November 1999. *See* Record at 13, 141-44. While, for purposes of background, Dr. Luongo relayed the plaintiff's comments regarding the state of her mental health on or prior to her date last insured, he offered no independent analysis concerning her diagnosis or functional limitations as of that time. *See id*. at 141-44.

Nor did the administrative law judge misconstrue Dr. Major's notes. While Dr. Major (or in some cases a different physician, evidently one of his associates) did intermittently note the existence of symptoms that (as plaintiff argues) might be viewed as consistent with depression, such as weight gain, poor sleeping and diminishment of walking (October 1996), concern on the plaintiff's part about her cholesterol and thyroid function (August 1997) and insomnia and considerable upset over problems her son was having (June 1998), Dr. Major made no contemporaneous notation that she might be suffering from a diagnosable mental-health condition or require mental-health treatment. *See id*. at 150, 152, 156. Moreover, in June 1998 he noted that the plaintiff "states that she is doing well and had a good winter in Fla." *Id*. at 150. The administrative law judge accurately summarized these notes, *id*. at 13, which reasonably can be viewed as supporting a finding that the plaintiff's condition was non-severe prior to her date last insured.

2. **Failure To Infer Date of Onset.** The plaintiff next contends that the administrative law judge failed to follow SSR 83-20, wrongly rejecting her claim of severe depression on the basis of lack of contemporaneous medical evidence. Statement of Errors at 6-12. SSR 83-20 provides:

> In disabilities of nontraumatic origin, the determination of onset involves consideration of the applicant's allegations, work history, if any, and the medical and other evidence

> concerning impairment severity. The weight to be given any of the relevant evidence depends on the individual case.

Id. at 50. The date alleged by a claimant should be used "if it is consistent with all the evidence available." *Id*. at 51. "[T]he established onset date must be fixed based on the facts and can never be inconsistent with the medical evidence of record." *Id.*

SSR 83-20 also contemplates the possibility that the available medical evidence will not yield a reasonable inference about the progression of a claimant's impairment. *Id*. In such a case, "it may be necessary to explore other sources of documentation" such as information from family members, friends and former employers of the claimant. *Id*. "The impact of lay evidence on the decision of onset will be limited to the degree it is not contrary to the medical evidence of record." *Id.* at 52.

The plaintiff posits that, although the administrative law judge accepted that she was disabled as of 1999, "he refused to accept Dr. Luongo's conclusion that the disabling effects went back to a date prior to the [date last insured] in March 31, 1998 despite the lay corroboration by [the plaintiff] and her husband." Statement of Errors at 6. The problem for the plaintiff – again – is that Dr. Luongo did not offer a retrospective analysis. Consonant with SSR 83-20, the administrative law judge supportably found the lay evidence inconsistent with relevant medical evidence of record, which included Dr. Major's contemporaneous notes and the opinions of both Drs. Allen and Houston that the plaintiff's mental condition was non-severe as of her date last insured. *See* Record at 13, 122, 132.

3. **Flawed Step 2 Analysis.** The plaintiff contends that the administrative law judge committed reversible error in articulating the Step 2 test as whether any of her impairments, singly, significantly limited her functioning rather than whether the combination of impairments did. Statement of Errors at 15. This argument is nothing more than a semantic quibble. While the administrative law judge omitted the "combination" language from his Findings, he did recite it in the

body of his decision. *Compare* Record at 11, 13 *with* Finding 5, *id*. at 14. The plaintiff identifies no substantive manner in which the administrative law judge failed to factor the effects of her thyroid condition into the overall picture of her functioning.

4. **Lack of Substantial Evidence.** The plaintiff asserts that the administrative law judge's Step 2 finding flies in the face of the evidence, including the lay testimony, Dr. Major's notes and Dr. Luongo's retrospective analysis. Statement of Errors at 12-16. The argument is unpersuasive. Dr. Luongo's analysis is not retrospective. Dr. Major's notes appear (at least to my layperson's eyes) equivocal; one could highlight passages that support or undercut a finding of non-severity as of date last insured. Perhaps more importantly, Drs. Allen and Houston, both of whom are mental-health experts and both of whom evidently had the benefit of review of Dr. Major's notes, concluded that the plaintiff's mental-health impairment was non-severe as of her date last insured. The administrative law judge's finding was supported by substantial evidence.

5. **Flawed Credibility Determination.** The plaintiff finally argues that the administrative law judge erred in construing Dr. Major's notes as undercutting her credibility. *Id*. at 16-18; *see also* Record at 13. Dr. Major's notes are equivocal and reasonably can be read as supporting a finding (contrary to the lay testimony) that the plaintiff's condition as of March 1998 was non-severe. Indeed, that is how Drs. Allen and Houston interpreted them. There is no reversible error. *See Frustaglia v. Secretary of Health & Human Servs.*, 829 F.2d 192, 195 (1st Cir. 1987) ("The credibility determination by the ALJ, who observed the claimant, evaluated his demeanor, and considered how that testimony fit in with the rest of the evidence, is entitled to deference, especially when supported by specific findings.").

II. Conclusion

For the foregoing reasons, I recommend that the commissioner's decision be **AFFIRMED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 13th day of March, 2003.

_____
David M. Cohen
United States Magistrate Judge

Plaintiff

DORIS HANLON represented by **FRANCIS JACKSON**
JACKSON & MACNICHOL
85 INDIA STREET
P.O. BOX 17713
PORTLAND, ME 04112-8713
207-772-9000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

SOCIAL SECURITY ADMINISTRATION COMMISSIONER	represented by	**JAMES M. MOORE** U.S. ATTORNEY'S OFFICE P.O. BOX 2460 BANGOR, ME 04402-2460 945-0344 *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*